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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,112	02/11/2004	Vincent Charles Conzola	RPS920030163US1	2680
45211	7590	04/05/2005	EXAMINER	
KELLY K. KORDZIK WINSTEAD SECHREST & MINICK PC PO BOX 50784 DALLAS, TX 75201			HESS, DANIEL A	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/776,112	CONZOLA, VINCENT CHARLES
Examiner	Art Unit	
Daniel A. Hess	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 07 February 2005.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 9-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 9-32 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## DETAILED ACTION

This action is in response to amendment by the applicant received 2/7/2005, which has been scanned into the electronic file of record. The examiner appreciates applicant's detailed and thoughtful arguments.

The applicant's arguments are generally not persuasive, and as a result, the present action is final.

### *Response to Arguments*

Applicant's arguments filed 2/7/2005 have been fully considered but they are not persuasive.

Firstly, the applicant has suggested on the top of page 10 of recent arguments and again at the bottom of page 11 that no motivation to combine has been given by the examiner. This is simply not true. An excerpt of the action is given below (from page 4 of 10/5/04 action).

Motivation is in bold.

– “In view of Novak’s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known measurement of physical characteristics in an enclosed area at the checkout **because otherwise a would-be shoplifter might interfere with sensor results inside the measurement area.”**

The examiner envisions a would-be shoplifter attempting to change product detection outcomes by interfering with detected parameters such as size, dimension, color, etc. in order to

indicate to the sensors that there is a different / cheaper product present, or, in the case of a weighed product such as produce, less of it (and thus a lower price).

Secondly, the applicant has argued that Bellis teaches away from the suggested combination with Novak. The examiner disagrees and notes that the concept of 'teaching away' is based on the idea that a first invention would not function properly or would not fulfill its intended purpose if modified based on the teachings of the second invention. This is not true here. There is no reason to believe that surrounding the detecting area of Bellis in an enclosure would somehow stop it from working properly.

Thirdly, the applicant has argued that the cited references address different problems. This argument only carries weight if the reference are so far apart that they do not have relevance to each other. This is the case when two references are in completely different fields of endeavor (generally such that they would be in different entire classifications). On the contrary, both Bellis and Novak have so much in common in that they would without any doubt belong in the same class and subclass (which they are: 235/383). They both detect physical properties of products at checkout in a store to prevent shoplifting.

Lastly, the applicant has argued that Bellis/Novak fails to show whether deactivation takes place while the product is in the enclosed area. The examiner notes that Bellis performs deactivation while a product is in the detection area. If, using Novak's teaching, an enclosure covered the detection area, then automatically this enclosure would also encompass the

deactivation system, since Bellis' deactivation system occurs with products that are in the sensing area.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellis, Jr. et al.

Re claim 7: Paragraph [0040] makes clear that some products may have surveillance tags while others may not. Although it is not explicitly stated, it would be at least obvious if not inherent for the computer system to track whether a particular product has a security tag or not, so that the deactivation system doesn't run when there is no tag to deactivate.

Re claim 8: These are all aspects that are either explicit or implied in claim 1 above.

Claims 9-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellis, Jr. et al. in view of Novak (US 5,497,314).

Re claims 9-14: Bellis, Jr. et al. teaches a checkout system (figure 1). Although the entire document is relevant, paragraphs [0007] and [0030] taken together are highly instructive, teaching that (a) a product has physical characteristics which are stored in relation to that product, (b) during check-out, various physical characteristics of the product are measured and (c) a determination is made as to whether there is a match. As is made clear in paragraph [0040], if an item properly verifies based on its physical characteristics, a signal to a security tag deactivator causes a security tag to be deactivated. Other limitations are inherent from steps (a) to (c). A careful reading of the limitations of claim 1 along with Bellis, Jr. et al. shows that all of the claimed limitations are taught. As paragraph [0030] states, weight, volume (i.e. size), height / width / length (i.e. shape) and color are all among the physical characteristics which may be measured. As is made clear in [0030], weight and shape are both measured in sequence.

Novak teaches (column 2, lines 10-37) that the physical characteristics of objects are measured in an *enclosed area* of a checkout.

In view of Novak's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known measurement of physical characteristics in an enclosed area at the checkout because otherwise a would-be shoplifter might interfere with sensor results inside the measurement area.

Re claim 15: Novak's enclosure takes objects one at a time. Novak (column 3, lines 30-50) measures the exact position of the edge of the object and captures its boundaries; clearly the

system would detect and prevent the placement of two objects at once. It has been stated (column 3, lines 15-20) that objects are to be examined one at a time.

Re claims 16 and 17: Generating an alert would be a necessary step because only a customer or other person could correct the problem in Novak of two objects placed together in the enclosure. Clearly, deactivation would not then occur because verification in this situation has not been successful.

Re claims 18-23: See discussion re claim 9-14 above.

Re claims 24-29: See discussion re claim 9-14 above. The difference is that claim 24 recites the limitation that a database stores the physical characteristics of the objects. Bellis et al. teaches (see paragraph [0019]) a database for storing this same info.

Re claims 30-32: See discussion re claims 15-17, respectively, above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Collins, Jr. et al. (US 6,431,446 and US 6,457,644) teach item checkout systems having product recognition.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A. Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH

DANIEL STCYR  
PRIMARY EXAMINER

